

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/29/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000228

FILED: _____

STATE OF ARIZONA

GERALD R GRANT

v.

MARK VINSON ADAMO

LIONEL C ESTRADA

PHX JUSTICE CT-SOUTH
REMAND DESK CR-CCC
STATE BAR OF ARIZONA
ATTN: DISCIPLINARY COUNSEL
111 W MONROE, STE 1800
PHX AZ 85003-1742

MINUTE ENTRY

SOUTH PHOENIX JUSTICE COURT

Cit. No. #2537207

Charge: A. HOV VIOLATION
B. NO INSURANCE
C. NO LIC IN POSS

DOB: 11/01/69

DOC: 10/31/01

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This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and this Court has considered and reviewed the record of the proceedings from the South Phoenix Justice Court, and the Memoranda submitted by Appellant.

Appellant, Mark V. Adamo, was issued citations on October 31, 2001 for three civil traffic violations: (1) HOV Violation, a civil traffic matter in violation of A.R.S. Section 28-737(A); (2) No Proof of Insurance, a civil traffic matter in violation of A.R.S. Section 28-4135(C); and (3) No License in Possession, a civil traffic matter in violation of A.R.S. Section 28-3169(A). Appellant was directed on the citation to appear at the South Phoenix Justice Court at 9:00 a.m. on November 27, 2001. Appellant signed the citation acknowledging his responsibility to appear. Appellant failed to appear and default judgments were entered on all three citations against the Appellant. The court sent a notice to appellant informing him of the default judgments and that his driver's license had been suspended. Appellant was given the opportunity to make arrangements to set up a payment schedule for the sanctions imposed. The notice was mailed to Appellant January 8, 2002.

It appears from the trial court's record that Appellant's counsel filed his Notice of Appearance on January 18, 2002 and filed a Motion to Set Aside the Default at the same time. The reason stated within the Motion to Set Aside the Default by counsel was:

Due to a clerical error, the Notice of Appearance in this case was never filed or sent in. Counsel's staff was alerted to Defendant's suspension of license only yesterday, January 17, 2002, when Defendant received same in the mail and brought it to counsel's

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attention. Counsel for Defendant apologizes to the court for all inconvenience caused by this error and respectfully moves this court to reset this matter for a Pretrial Conference.¹

This motion was denied in an order dated February 20, 2002 by the Honorable Pamela C. Gutierrez, South Phoenix Justice of the Peace. Thereafter, Appellant filed on March 7, 2002 a motion entitled "Amended Motion to Set Aside Default and/or Suspension of License". Curiously, this "Amended Motion" recites a startlingly different set of circumstances and facts that might warrant an order setting aside the default. In this "Amended Motion" counsel for Appellant asserts that Appellant/Defendant was ill at the time he was required to appear in court:

The Defendant became ill one day prior to the first court appearance scheduled in this matter. He suffered a very high fever accompanied by chills, muscle aches, vomiting and extreme fatigue. This illness progressed over the course of nearly three days. At the end of this time, when he began to feel better, he realized that he had missed his court date. He retained an attorney, Lionel Estrada, within three days of the missed court date....²

Appellant's counsel further alleges within the "Amended Motion" that after Appellant had missed his court date, counsel had filed a Notice of Appearance and Motion to Quash with the wrong court. Counsel did not discover the error until January 17, 2002 when Appellant received the notice from the South Phoenix Justice Court that his license had been suspended and requesting payment of the fines imposed.

¹ Appellant/Defendant's Motion to Set Aside Default, dated January 18, 2002, trial court's record on appeal.

² Appellant/Defendant's Amended Motion to Set Aside Default and/or Suspicion of License, dated March 7, 2002, at pages 1-2, trial court record on appeal.

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The Amended Motion to Set Aside the Default was denied by the trial court on March 11, 2002, perhaps because of the grossly inconsistent reasons cited by counsel for Appellant's failure to appear at the time scheduled in his case. The trial judge further noted when denying the motion that "proof of insurance for the date of citation may be submitted for possible reduction and fine."

Of particular concern to this court are the representations made by Appellant's counsel to the trial court. In the first Motion to Set Aside Default it is clear that counsel implies that the reason Appellant failed to appear at the time scheduled for his case was due to a "clerical error" by counsel. In the Amended Motion to Set Aside Default, Appellant's counsel makes it clear that Appellant missed that first court hearing and only contacted counsel after the hearing, and after the default judgment had been entered. In his appellate memorandum, counsel for Appellant now states: "Appellant dropped off citation to his attorney's office prior to the assigned court appearance date."³

The only issue presented on appeal is whether the trial court erred in denying Appellant's Motion to Set Aside the Default Judgment, and the subsequent "Amended Motion". The appropriate standard of review for an appellate court regarding a trial court's order denying relief of a motion to Set Aside a Default Judgment, is abuse of discretion.⁴ This Court finds no abuse of discretion in the trial court's action denying Appellant's request to set aside the default judgment. Clearly, the trial judge could have concluded from Appellant's confusing and conflicting grounds to set aside the default that the Appellant or his counsel was less than credible.

³ Appellant's memorandum of Points and Authorities, dated June 21, 2002, at page 1.

⁴ See Rule 60(c), Arizona Rules of Civil Procedure; Mission Insurance Company v. Cash, Sullivan and Cross, 170 Ariz. 105, 822 P.2d 1 (App. 1991).

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IT IS THEREFORE ORDERED affirming the judgment of the South Phoenix Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the South Phoenix Justice Court for all further and future proceedings in this case.